



The Constitution Unit

Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Devolution and the Centre

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Devolution and the Centre Monitoring Report

November 2004

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Executive Summary

- **The Government cancels its plans for regional devolution referendums in the North West and Yorkshire-Humber.**
- **The Conservatives restate their opposition to regional assemblies but water down opposition to Regional Development Agencies.**
- **The Queen's Speech, including two Wales bills, is attacked by Plaid Cymru and the SNP.**
- **Several additional executive functions are transferred to the National Assembly for Wales and Scottish Parliament by Statutory Instrument.**
- **The Select Committee on the Office for the Deputy Prime Minister prepares its report on the *Draft Regional Assemblies Bill*.**
- **The Lords Constitution Committee publishes two reports relating to devolution.**
- **The Government responds to the Welsh Affairs Committee report on the Children's Commissioner for Wales.**
- **The British-Irish Council holds its 6th Summit in Guernsey.**
- **Lord Falconer discusses the Joint Ministerial Committee and its state of disuse with the Lords Constitution Committee.**
- **The Government awaits final report from the Boundary Commission for Scotland.**
- **Peter Hain commits to strengthening the National Assembly for Wales.**

Chronology of Events at the Centre : September to November 2004

9 September	Arbuthnott Commission holds inaugural meeting
9,14,15 September	ODPM Select Committee hearings on the <i>Draft Regional Assemblies Bill</i>
13 September	Ministerial Statements made on regional referendum plans
14 September	JMC (Europe) Meeting
15 September	Oral Questions to the Wales Office
20 October	JMC (Europe) Meeting
20 October	Lord Chancellor appears in front of the Lords Constitution Committee
20 October	Oral Questions to the Office of the Deputy Prime Minister
26 October	Oral Questions to the Scotland Office
27 October	Oral Questions to the Northern Ireland Office
29 October	Publication of Lords Constitution Committee Report on 'Parliament and the Legislative Process'
3 November	Oral Questions to the Wales Office
8 November	British-Irish Council Drugs Sectoral Group meets in Edinburgh
8 November	Deputy Prime Minister makes statement on the abandonment of two regional assembly referendums
17 November	Oral Questions to the Office of the Deputy Prime Minister
17 November	Government formally responds to Welsh Affairs Committee Report on the <i>Draft Transport (Wales) Bill</i>
18 November	Publication of Lords Constitution Committee report on devolution and the legislative process
19 November	6 th Summit of British-Irish Council held in Guernsey
23 November	Queen's Speech

1. The Government Abandons its Regional Referendum Plans

The big story in the politics of devolution over the last three months was the rejection by 78% of voters in the North East of England of Deputy Prime Minister John Prescott's proposal to establish an elected assembly for the region. In addition to spelling the end of the specific devolution proposal on the ballot paper, the outcome of the referendum dealt a probably fatal blow to the Government's project of moving towards directly-elected regional government in England.

In an interview shortly before the poll, Nick Raynsford (Minister for Local and Regional Government) had responded with an unequivocal "yes" to the question of whether the government would press on with plans to hold referendums in two more regions (North West England, and Yorkshire and the Humber) in the event of a 'No' vote in the North East.¹ However, less than a week after the negative verdict of the north-eastern electorate, the Deputy Prime Minister announced in the House of Commons that the two further northern polls would not go ahead after all.²

These two referendums were originally scheduled to take place concurrently with the North East poll, but, as reported in the August 2004 *Devolution and the Centre* monitoring report,³ they were postponed in July ostensibly because of doubts about the integrity of the all-postal ballot system.⁴ Prescott's defended his decision to abandon plans for the further referendums on the grounds that the sounding exercises and legislative procedures that would have to precede the votes would "result in a long

¹ <http://www.epolitix.com/EN/Interviews/200410/4af17a68-3bab-41d8-8c64-259b5c380ea2.htm>

² HC Deb 8 November 2004 Column 588

³ See page 10 of the August 2004 Monitoring Report at:

http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_august_2004.pdf

⁴ Junior Ministers Nick Raynsford MP and Lord Rooker defended this decision in the House of Commons and House of Lords respectively on 13 September 2004. The ministerial statements and ensuing debates can be viewed at: HC Deb 13 September 2004 Col 987-996 and HL Deb 13 September 2004 Col 933-945.

period of uncertainty for local government in the two regions.”⁵ Clearly, however, the prospect of further heavy defeats were a factor in the deliberations within the Office of the Deputy Prime Minister. Prescott went on to defend the broad thrust of the Government’s regional agenda and to defend the record of the non-elected Regional Chambers and Regional Development Agencies (RDAs), established during Blair’s first term in office.

2. Opponents of the Government’s Regional Strategy on the Offensive

In the aftermath of the North East referendum, the Conservative Party stepped up its attacks on the Government’s regional agenda. During Prime Minister’s Question Time on 10 November 2004, Leader of the Opposition Michael Howard called on Tony Blair to abolish the eight Regional Chambers on the grounds that they “cost millions of pounds [and] ... have no popular support at all.”⁶ Howard’s latest charge is part of a consistent Conservative Party campaign against regional government, which, the party argues, leads to emasculated local government and higher council tax bills.⁷

To some extent, however, the party seems to have softened its stance of late. The 2001 Conservative manifesto committed the party to abolishing the Regional Development Agencies along with the Regional Chambers (the latter designed to hold the former to account), but Shadow Regional Affairs spokesman Bernard Jenkin has notably ceased to refer to this pledge.⁸ A spokesperson for Jenkin has confirmed that Conservative policy in this area is under review. The emerging assumption in the party seems to be that

⁵ HC Deb 8 November 2004 Column 588

⁶ HC Deb 10 November 2004 Col 839. See also the Conservative Party website at: http://www.conservatives.com/tile.do?def=news.story.page&obj_id=117024

⁷ See, for instance, Shadow Secretary of State for Local and Devolved Government Affairs Caroline Spelman’s speech at the 2004 Conservative Party conference on October 7 2004 at: http://www.conservatives.com/tile.do?def=news.story.page&obj_id=116472&speeches=1

⁸ See, for instance, Jenkin’s Party Conference Speech on October 7 2004 at: http://www.conservatives.com/tile.do?def=news.story.page&obj_id=116464&speeches=1

RDAs might deliver real economic benefits and that consequently, provided they are led by local business, there may be a case for retaining them. The apparent Conservative u-turn was highlighted by John Prescott on 20 October in the Commons, as he defended the RDAs and their positive economic effects. He argued that RDAs attract investment by demonstrating the Government's commitment to developing the regional economy,⁹ and claimed in a later debate that in the last two years the English RDAs "have created or safeguarded more than 160,000 jobs."¹⁰

The Liberal Democrats have long been in favour of regional government and their critique of the Government has therefore come from the opposite direction to that of the Conservatives. The Government's mistake, from the Liberal Democrat perspective, was that the Regional Assembly on offer in the North East was too weak to inspire voters to support it rather than being an unnecessary extra layer of government, as the Conservatives argue. Blaming "Labour's half-baked ideas on devolution" for the 'No' vote, LibDem Regional Affairs Spokesman Edward Davey argued that "the case for [regional devolution] remains strong" and advocated the establishment of a "Convention of the North", analogous to the Scottish Constitutional Convention, where the future of regional democracy could be debated.¹¹

Since the referendum defeat, Labour MP Frank Field has also entered the fray by submitting an Early Day Motion,¹² on 8 November 2004, urging the Government to create an English Parliament rather than going down the regional path. By 18

⁹ HC Deb 20 October 2004, Column 878-880

¹⁰ HC Deb 8 November 2004, Column 588

¹¹ These quotes are from a press release released by Edward Davey on 5 November 2004. Accessible at: <http://www.libdems.org.uk/index.cfm/page.homepage/section.home/article.7727>

¹² <http://www.publications.parliament.uk/pa/cm/cmedm/41108e01.htm>

November, the last day of the 2003-4 session, however, this motion had garnered a mere two signatories.

3. The Queen's Speech

On 23 November, the Queen delivered her annual address to the combined Houses of Commons and Lords during the State Opening of Parliament. Among the many pieces of planned legislation mentioned in the speech, two pertain exclusively to devolved administrations (that of Wales in both cases).

First, the Government confirmed its intention to introduce a *Transport (Wales) Bill* in the 2004-5 session, which will “provide the Welsh assembly with a range of transport-related powers.”¹³ In particular, the Bill will empower (and indeed require) the National Assembly to develop an integrated transport strategy for Wales. Second, the Government announced plans for a *Public Services Ombudsman (Wales) Bill* which will create a single Ombudsman service for Wales, enabling the public to more easily seek redress for suffering caused by maladministration or service failure.

Both the Welsh and Scottish nationalist parties reacted with dissatisfaction to the content of the Queen's Speech. The SNP was especially critical of the high-profile proposal to introduce ID cards, the carrying of which the Scottish Executive has announced it would not make compulsory. As Alex Salmond MP and Michael Weir MP both pointed out in the Commons on 23 November, this could lead to a situation where a resident of Scotland would not have to carry an ID card to access devolved services such as hospitals, but would have to do so in order to receive his/her (non-devolved) pension.¹⁴ This dispute is a good example of the complications devolution has created for the

legislative process, an issue covered in a recent Lords Constitution Committee report (see section 7.2 below).

For his part, Plaid Cymru parliamentary leader Elfyn Llwyd argued that the inclusion of a mere two Welsh bills in the Queen's Speech "shows the government's contempt for the Labour Assembly Government and the National Assembly for Wales" since the Assembly Government had proposed six pieces of legislation.¹⁵

Further coverage of devolution-related debates sparked by the Queen's Speech will be covered in the February 2005 *Devolution and the Centre* monitoring report.

4. Territorial Committees (House of Commons)

Neither the Welsh Grand Committee, nor the Northern Ireland Grand Committee, nor the Regional Affairs Committee have met during the last quarter. The Scottish Grand Committee and Scottish Standing Committees have not met for over a year and for over five years respectively, reflecting the fact that the legislation they would once have considered has largely been devolved to Holyrood. Relevant measures considered by the Standing Committee on Delegated Legislation are discussed below in sections 5.1 and 5.2.

5 Delegated Legislation

5.1 National Assembly for Wales (Transfer of Functions) Order

The *Draft National Assembly for Wales (Transfer of Functions) Order 2004* was approved by the Second Standing Committee on Delegated Legislation on 3 November,

¹³ HL Deb 23 November 2004, Col 4

¹⁴ See Weir's speech at: HC Deb 23 November 2004 Col 80-5

¹⁵ Press Release on 23 November 2004, can be viewed at: www.plaidcymru.org

and by the House of Lords on 4 November.¹⁶ This statutory instrument transfers a total of five functions to the National Assembly for Wales (listed below), some of which members of the Opposition raised concerns about.¹⁷

Firstly, on the Standing Committee, it was questioned whether the proposed transfer of certain animal health and welfare powers to the Assembly might render more difficult coordinated action to combat animal welfare problems that cross the English-Welsh border such as future outbreaks of foot and mouth disease.

In addition, there was some dissent concerning the transfer of the power to decide whether items of historical or artistic interest should be accepted in lieu of inheritance tax. Conservative members argued that this transfer constituted a granting of the power of taxation to the Assembly, something explicitly ruled out in the *Government of Wales Act 1998*, and should therefore be subject to a referendum. On behalf of the Government, Don Touhig (Parliamentary Under-Secretary of State for Wales) rebutted this charge on the grounds that the inheritance tax change was “simply a common-sense tidying up of existing legislation.”¹⁸ He further pointed out that all the measures in the Order enjoyed the support of all parties in the National Assembly. The Order was duly approved by the Committee and subsequently by the Lords. It will shortly be published and will come into force at the end of the year.

¹⁶ HL Deb 4 November 2004, Col 462-469

¹⁷ The transcript of the committee hearing can be viewed at:

<http://www.publications.parliament.uk/pa/cm200304/cmstand/deleg2/st041103/41103s01.htm>

¹⁸ <http://www.publications.parliament.uk/pa/cm200304/cmstand/deleg2/st041103/41103s01.htm> (Col 12)

Draft National Assembly for Wales (Transfer of Functions) Order 2004

The Order makes the following changes to the power of the Welsh National Assembly:

1. Certain animal health and welfare powers are transferred to the Assembly.
2. The power to set fees payable to local authorities in Wales for local land charges and personal searches is transferred to the Assembly.
3. The power to decide whether artistic or historical items can be accepted in lieu of inheritance tax is transferred to the Assembly.
4. The authority to make regulations governing the notice periods in Wales for the removal of abandoned vehicles by the police is transferred to the Assembly.
5. An anomaly is corrected in the Assembly's power to set threshold levels for water industry inset appointments.

5.2 Delegated Legislation relating to the Scottish Parliament

Three draft statutory instruments (listed below) making changes to the *Scotland Act 1998* and the *Freedom of Information (Scotland) Act 2002* were approved by Parliament in November 2004. Among other things, these orders extend the legislative competence of the Scottish Parliament in the area of rail transport and clarify the powers of the Scottish Parliament and Executive with respect to the administration of Common Agricultural Policy support for farmers. The Orders were duly approved on 3 November and 9 November by the Standing Committee on Delegated Legislation¹⁹ and the House of Lords²⁰ respectively. They will shortly be published and will come into force automatically.

Statutory Instruments considered by the Third Standing Committee on Delegated Legislation, 3 November 2004:

1. Draft Scotland Act 1998 (Modifications of Schedule 5) Order 2004
2. Draft Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2004
3. Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004

¹⁹ The transcript of the committee hearing can be viewed at:

<http://www.publications.parliament.uk/pa/cm200304/cmstand/deleg3/st041103/41103s01.htm>

²⁰ HL Deb 9 November 2004, Col 829-843

6. Commons Select Committee Activity

6.1. ODPM Committee Scrutinises Draft Regional Assemblies Bill

In September 2004, the Select Committee on the Office of the Deputy Prime Minister held a number of hearings on the *Draft Regional Assemblies Bill*, published by the Government in July 2004. Among the parties called to give evidence were Nick Raynsford (Minister for Local and Regional Government), and representatives of the Local Government Association and a number of Regional Development Agencies and Regional Chambers. The Committee also received written evidence from a plethora of organisations including the Campaign for English Regions and the Confederation of British Industry. All the oral and written evidence accepted by the Committee can be viewed on-line.²¹

Given the demise of the plans to establish directly-elected regional assemblies, the bill, which would have specified the powers to be granted to the new bodies, will not now be introduced by the Government.²² The ODPM Committee is nevertheless planning to publish a report of their findings in the next few months which may help inform the future development of regional policy.

6.2 Northern Ireland Affairs Committee

On 25 October 2004, the Northern Ireland Affairs Committee published a report on *Social Housing Provision in Northern Ireland*²³.

The Committee met thirteen times in September, October and November to consider the following subjects:

²¹ <http://www.publications.parliament.uk/pa/cm/cmmodpm.htm>

²² This was confirmed by John Prescott in the House of Commons. HC Deb 8 November 2004 Col 587

²³ <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmniaf/493/493.pdf>

- Waste Management Strategy in Northern Ireland
- Northern Ireland Departments' Resource Accounts 2002-03
- Hate Crime in Northern Ireland
- Functions of the Office of the Police Ombudsman for Northern Ireland
- Air Transport Services in Northern Ireland

Full transcripts of these meetings can be accessed on-line.²⁴

6.3 Scottish Affairs Committee

Having held its previous hearing in July 2004, the Scottish Affairs Committee met on 17 November to continue looking into the implications for Grangemouth of BP's plans for its petrochemicals business. The full transcript of the meeting will shortly be published on the Committee's website.²⁵

6.4 Welsh Affairs Committee

The Welsh Affairs Committee has published no reports of its own in the past quarter but has received and published Government responses to two earlier publications. On 17 November the Government's response to the Committee's report on the *Draft Transport (Wales) Bill* was published.²⁶ The original report²⁷ (published 19 July 2004), which broadly welcomed the draft bill,²⁸ was the result of an unprecedented collaboration between the Commons Welsh Affairs Committee and the National Assembly Economic Development and Transport Committee. A number of the committees' recommendations were accepted by the Government in its response, and it seems likely

²⁴ <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmniaf.htm>

²⁵ http://www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm

²⁶ The Government's response was published as the 5th Special Report of the Welsh Affairs Committee at: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/1252/1252.pdf>

²⁷ The Committee Report can be viewed at: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/759/759.pdf>

that this innovative exercise in inter-institutional pre-legislative scrutiny will be repeated.

As noted in section 3 of this report, the Government recently signalled its intention to press ahead with this legislation in the Queen's Speech.

In the last quarter, the Welsh Affairs Committee also received a response from the Government to its report on the Children's Commissioner for Wales (see section 8)

The Welsh Affairs Committee met eight times in October and November 2004 to consider the following subjects:

- Manufacturing and Trade in Wales
- Police Service, Crime and Anti-social behaviour in Wales

Full transcripts of all meetings and reports can be accessed on the Welsh Affairs Committee website.²⁹

7. Lords Constitution Committee Publications

7.1. Parliament and the Legislative Process

After holding ten meetings on 'Parliament and the Legislative Process' between May and October 2004, the Lords Constitution Committee published a report on this subject on 29 October,³⁰ which made a number of points pertaining to devolution.

In the section on pre-legislative scrutiny, the Committee expressed its belief that legislation should be published in draft form whenever possible, and noted that the ability to undertake pre-legislative scrutiny would be of benefit to the devolved administrations as well as to legislators at Westminster. It was particularly

²⁸ The *Draft Transport (Wales) Bill* itself can be viewed at:

http://www.walesoffice.gov.uk/transport_bill.pdf

²⁹ <http://www.publications.parliament.uk/pa/cm/cmwelaf.htm>

recommended that “further thought should be given to how Members of the National Assembly [for Wales] can be afforded the opportunity to consider [draft] Westminster legislation that will affect the Assembly and its functions.”³¹

Two sections of the Report argued that the UK Parliament might function more effectively if it were to follow examples set by the devolved administrations. First, the Report suggested that the Government’s stranglehold on the parliamentary timetable could be loosened by forming a business committee along the lines of those established in Edinburgh, Cardiff and Belfast.³² Second, under the heading ‘Connecting with the Public’, the Report advocated emulating the Scottish Parliament’s strategy of informing the public about and engaging the public with the legislative process.

7.2 Devolution: Its Effect on the Practice of Legislation at Westminster

On 18 November, the Lords Constitution Committee published its 15th report of the session on the effects of devolution on the legislative process at Westminster.³³ The primary objective of this report was to ascertain whether devolution had complicated rather than simplified the preparation of legislation by requiring Acts of Parliament to make detailed, specific provisions for Scotland, Wales and Northern Ireland. The report was composed of a paper on this subject by Professor C. M. G. Himsworth and a brief introduction to the paper by the Committee itself. Himsworth’s conclusion was that pre-1999 expectations had seriously underestimated the likely effects of devolution, and “especially its fearful asymmetry”, on the legislative process.³⁴ It was suggested that although some post-devolution legislative difficulties may have been mere teething

³⁰ <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/173.pdf>

³¹ *ibid*, Paragraph 27

³² *ibid*, Paragraph 117

³³ <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/192/192.pdf>

³⁴ *ibid*, Paragraph 72-3

troubles, tricky problems such as the current dispute over the respective powers of the England-based and Wales-based Children's Commissioners (see section 8) are likely to continue to arise.³⁵ As noted above (section 3), another recent example is that of the proposed ID cards bill, which is already proving controversial owing to ambiguity as to whether residents of Scotland would have to carry the new cards.

8. The Children's Commissioners Dispute

On 4 October 2004 the Government formally responded to the Welsh Affairs Committee report on *The Powers of the Children's Commissioner for Wales*³⁶ (published on 29 July 2004). The Committee's report had criticised the Government's *Children Bill*³⁷ on the grounds that the proposals to establish a Children's Commissioner for England do not guarantee sufficient power and autonomy to the new position. In addition, the Committee expressed concern about the nature of the future relationship of the English Commissioner with his or her Welsh, Northern Irish and Scottish counterparts. The Report specifically called for the Bill to be amended to devolve further powers to the Children's Commissioner for Wales in order to avoid a situation in which the English and Welsh Commissioners would each bear partial responsibility for the protection of the interests of children in Wales.

In its response³⁸, the Government restated its previously expressed opposition to using the *Children Bill* as a means of amending and extending the Welsh devolution settlement, and argued that it was only logical that the England-based Commissioner should be responsible for children-related issues in non-devolved areas.

³⁵ *ibid*, Paragraph 74

³⁶ <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/538/538.pdf>

³⁷ <http://www.publications.parliament.uk/pa/cm200304/cmbills/144/2004144.pdf>

³⁸ The Government's response was published as the 4th Special Report of the Welsh Affairs Committee at: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/1126/1126.pdf>

This ongoing debate is an interesting example of post-devolution inter-governmental relations. First of all, it is interesting that England will be the last part of the United Kingdom to have a Children's Commissioner and has followed the example set by the devolved administrations, demonstrating that devolution has changed the way policy is made in Westminster. The second noteworthy point about this story is how it illustrates the difficulties of achieving joined-up government across the devolution divide. The National Assembly for Wales and the Welsh Affairs Committee argued for a holistic approach, that any child in a Welsh children's home should come under the Welsh Commissioner, even if sent there by an English social services department. The UK Government could not accept such a breach of the reserved/devolved division of responsibilities.

9. Intergovernmental Relations

9.1. British-Irish Council

A Ministerial Meeting of the Misuse of Drugs Sectoral Group of the British-Irish Council was held in Edinburgh on 8 November 2004 to discuss the problem of drug misuse and to agree on a future work plan to tackle this issue. In attendance were representatives of the governments or administrations of the United Kingdom, the Republic of Ireland, Scotland, Wales, Jersey, Guernsey and the Isle of Man. The meeting was chaired by Noel Ahern TD, the Minister of State responsible for drugs policy in the Irish government. A communiqué was published giving further details about the meeting and the action points agreed upon.³⁹

³⁹ <http://www.britishirishcouncil.org/documents/drugs3.asp>

On 19 November, the 6th Summit of the British-Irish Council took place in Guernsey and focussed on the issue of tourism, the sector in which the Guernsey government leads. The Council agreed that further cooperation would be beneficial in areas such as the measurement of the impact of tourism, and the training and recruitment of leisure staff. Updates were also given on work being undertaken in the sectors led by each administration. A communiqué giving further details about the meeting was issued.⁴⁰

9.2 Joint Ministerial Council Activity

The formal intergovernmental Joint Ministerial Council (JMC) framework⁴¹, within which representatives of the UK government can meet their Scottish, Welsh and Northern Irish counterparts for consultation and dispute resolution, has not been used in the last quarter, with the exception of the JMC (Europe) (see section 9.3 below). No meetings have been convened of the JMC (Health), the JMC (Knowledge Economy), JMC (Poverty), or the plenary JMC, chaired by the British Prime Minister. As noted in a previous monitoring report,⁴² this latter body is supposed to meet at least once a year but has not done so since October 2002.⁴³

9.3 JMC (Europe)

Following the pattern set over the past two years, the JMC (Europe) has continued to meet while the other JMC bodies have lain disused. The JMC (Europe) meets quarterly before European Council meetings to brief the devolved administrations about the

⁴⁰ http://www.british-irishcouncil.org/documents/gsy_summit.asp

⁴¹ Information on the JMC machinery can be viewed on the Department for Constitutional Affairs website at: <http://www.dca.gov.uk/constitution/devolution/jmc.htm#part1>

⁴² http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_august_2004.pdf

⁴³ This commitment can be found in a supplementary agreement to the *Memorandum of Understanding* between the UK and devolved administrations at: http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf

agenda and consult them about the UK line. Recent JMC (Europe) meetings were held on 14 September and 20 October. No information about these meetings is published.

9.4 Lord Falconer Discusses the JMC with the Lords Constitution Committee

On 20 October 2004, Lord Falconer, the Lord Chancellor, made his annual appearance in front of the House of Lords Constitution Committee, during which he was questioned by Committee Chairman Lord Norton on the neglect of the JMCs in general and the JMC plenary in particular.⁴⁴ His response was that the JMC plenary has not met for the past two years because there have been no problems or crises that require resolution at the First or Prime Ministerial level. He pointed to the similar political complexions of the UK and devolved administrations as the main reason why informal consultation has been an adequate substitute for the institutionalised inter-governmental bodies. Lord Falconer further argued that “the JMC machinery is well able to rise to the challenge”⁴⁵ in the event of future clashes between the different governments of the UK, and that there would be no point in holding a JMC plenary meeting simply to ascertain whether the machinery remained in good working order. Recent reports published by the committee (discussed above in section 6) have not covered the JMC framework and its state of disuse but the Committee is likely to follow the Lord Chancellor up on this matter at a later date.

10. Scottish Smoking Ban Proposal Puts Pressure on UK Government

Scottish First Minister Jack McDonnell announced, on 10 November 2004, that the Scottish Executive intends to introduce a bill to the Scottish Parliament banning smoking in all enclosed public places. The result of this move was to add to the pressure

⁴⁴ The full transcript of this meeting can be viewed at:

<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/999/const2010.pdf>

⁴⁵ <http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/999/const2010.pdf> (Page 22)

on UK Health Secretary John Reid, who had previously criticised the smoking ban issue as “an obsession of the learned middle class”.⁴⁶ In an interesting example of how the devolved administrations can affect governance at the ‘Centre’ of the United Kingdom, the Scottish announcement, following last year’s ban in Ireland, was immediately picked up on by anti-smoking groups⁴⁷ and used as a stick to beat the British Government. The week after the Scottish plan was announced, on 15 November, the Department of Health published its *White Paper on Public Health*⁴⁸ which outlined the government’s preferred compromise solution whereby smoking would only be permitted in pubs which did not prepare food. Whether this will satisfy those in favour of replicating the Scottish plan on a nationwide basis remains to be seen.

10.1 Smoking Ban in Wales

Following the publication of the *White Paper on Public Health*, Welsh Secretary Peter Hain was asked in a written question about the Government’s plans to legislate in order to allow the National Assembly for Wales to ban smoking in public places. Hain’s response was that a National Assembly committee had been asked to consider this issue and was expected to report in May 2005, following which legislation on the matter could be brought if necessary.⁴⁹

11. Arbuthnott Commission Commences Work

The Arbuthnott Commission on Boundary Differences and Voting Systems in Scotland⁵⁰ has begun its examination of the consequences of having four different systems of voting in Scotland, and non-coterminous constituencies for the Westminster and

⁴⁶ <http://www.timesonline.co.uk/article/0,,14709-1140926,00.html>

⁴⁷ See for instance the 10 November Press Release by the pressure group Action on Smoking and Health at: <http://www.ash.org.uk/>

⁴⁸ <http://www.dh.gov.uk/assetRoot/04/09/47/60/04094760.pdf>

⁴⁹ HC Deb 18 November 2004 Col 1710W

Holyrood Parliaments.⁵¹ The creation of the eleven-person Commission, headed by Sir John Arbuthnott,⁵² was announced by Scottish Secretary Alistair Darling in February 2004⁵³ but did not hold its first official meeting until 9 September 2004. The Commission held further meetings on 4 October and 1 November, with representatives of the Boundary Commission for Scotland and the Electoral Commission in attendance. Arbuthnott is planning to publish a consultation document in January 2005, which will be followed by a series of meetings with legislators in both the UK and Scottish Parliaments.

11.1 Boundary Commission for Scotland

Meanwhile, as Arbuthnott continues its work, the Boundaries Commission for Scotland moves closer to completing its final report on the reduction of the Scottish representation at Westminster. Although the Commission officially has until December 2006 to finish its work, officials expect to formally present Scotland Secretary Alistair Darling with the proposals to cut the number of Scottish MPs from 72 to 59 in time for a Spring General Election. Certainly, previous statements made by Darling, not to mention the fact that the political parties are selecting election candidates on the basis of a 59-seat Scotland, would make any delay in bringing the Scottish quota in line with that of England surprising and controversial.

12. Government Committed to a Stronger National Assembly for Wales

⁵⁰ <http://www.arbuthnottcommission.gov.uk/index.htm>

⁵¹ For further information about the Commission's remit, see the Feb 2004 *Devolution and the Centre* Monitoring Report at: http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf

⁵² Full details of the membership of the Commission are available at:

<http://www.arbuthnottcommission.gov.uk/members.htm>

⁵³ HC Deb 9 February 2004 Col 1150

The Government has still made no response to the *Richard Commission Report*⁵⁴ on the powers of the National Assembly for Wales, which advocated granting primary legislative powers to the Assembly. Welsh Secretary Peter Hain had previously indicated that he would wait for the Assembly to issue its response before he did likewise,⁵⁵ an eventuality whose likelihood has receded given the apparent sidelining of Richard's recommendations in the broader debate on reforming the Assembly.

Hain gave some indication as to his position on the issue of amendments to the devolution settlement in response to an oral parliamentary question on 15 September, stating that the UK Government and the leadership of the National Assembly were in full agreement on the objective of moving towards "increased and enhanced powers for the National Assembly for Wales."⁵⁶ This commitment falls some way short of a statement in favour of granting full legislative powers to the Assembly, and reflects the position adopted at the Welsh Labour Conference in September. In effect, Labour's position is to delay making any firm commitments on the issue until after the General Election, when a White Paper is scheduled to be published.

13. The Resuscitation of the Northern Ireland Assembly?

On 17 November, Tony Blair met Democratic Unionist leader Ian Paisley MP to discuss proposals to get the devolved Northern Ireland institutions back on the road. The prospects for devolution in Northern Ireland are discussed in detail in this month's *Northern Ireland Monitoring Report*.

14. Devolution and the Law

⁵⁴ The Report can be viewed at: <http://www.richardcommission.gov.uk/content/finalreport/report-e.pdf>

⁵⁵ This commitment was made in a Welsh Grand Committee meeting on 3 July 2004. Accessible at: <http://www.publications.parliament.uk/pa/cm200304/cmstand/welshg/st040706/am/40706s01.htm> (Col 3)

14.1 Moir v. Her Majesty's Advocate

On 11 November, the Judicial Committee of the Privy Council dismissed a petition for special leave to appeal in the case of *Moir v. Her Majesty's Advocate*.⁵⁷ The petitioner sought to raise issues concerning alleged delay in his prosecution before his trial was heard in the High Court of Justiciary, on the grounds that such delay was incompatible with his right to a fair trial under Article 6(1) of the European Convention on Human Rights (ECHR). The petition was refused on the grounds that the alleged incompatibility between the ECHR and the Act in question ought to be looked at after, not before, the petitioner's trial, in the event of a conviction.

14.2 Davidson v. Scottish Ministers

These reports have not previously noted the case of *Davidson v. Scottish Ministers*, in which the House of Lords Appellate Committee gave judgment on 15 July 2004.⁵⁸ The case concerns the practice of slopping out at Barlinnie Prison and whether that practice breached the applicant's human rights. The legal points at issue relate to whether a Scottish judge was debarred because of bias for sitting judicially when a case raised issues on which he had previously expressed his views (in this case, in Parliament, during proceedings on the *Scotland Act 1998*),. A secondary issue aired by the case was the extent to which the Scottish Ministers are protected by the Crown immunity preserved by the *Crown Proceedings Act 1947* (in particular from orders for specific performance under section 21 of the Act). It is also worth noting that this issue had proceeded to the House of Lords on appeal from the Scottish courts, and not to the Judicial Committee of the Privy Council as a judicial issue.

⁵⁶ HC Deb 15 September 2004 Col 1258

⁵⁷ [2004] UKPC D2, available on the internet at <http://www.privvy-council.org.uk/output/Page472.asp>

⁵⁸ [2004] UKHL 34